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July 14, 2010

MOU Fiscal Analysis for Bargaining Units 5, 8, 12, 16, 18, and 19

LEGISLATIVE ANALYST'S OFFICE

Presented to:

The California Legislature

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Background on the State Memorandum of Understanding (MOU) Process

- ☑ ***Dills Act Provides for State Employee Collective Bargaining.*** With passage of the Ralph C. Dills Act in 1977, the Legislature authorized collective bargaining between unions representing rank-and-file state employees and the administration. Currently, around 200,000 state workers belong to the state's 21 bargaining units.

- ☑ ***Legislature's Role in the MOU Process.*** The key provisions of MOUs must be ratified by the Legislature and bargaining unit members in order to take effect. In addition, under the Dills Act, the Legislature annually may choose whether to appropriate funds in the budget to continue the financial provisions of each MOU.

- ☑ ***Fiscal Analysis Required by State Law.*** Section 19829.5 of the Government Code—approved by the Legislature in 2005—requires the Legislative Analyst's Office to issue a fiscal analysis of proposed MOUs.

- ☑ ***MOUs for Six State Unions Now Before Lawmakers.*** The MOUs addressed in this analysis apply to six bargaining units that include rank-and-file California Highway Patrol (CHP) officers, firefighters, craft and maintenance workers, physicians and dentists, psychiatric technicians, and health and social service professionals. Collectively, these six MOUs apply to about 20 percent of the state's rank-and-file employees.

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Summary of the Six MOUs

- ☑ ***Cost Reductions.*** The MOUs would reduce state costs in 2010-11, as follows:
  - ***Personal Leave Program (PLP).*** For most employees (excluding CHP officers and firefighters), the PLP would involve one additional day of leave per month and reduced pay of 4.6 percent for 12 months (ending in early 2011-12).
  - ***Shift of Pension Contributions to Employees.*** Employees would pay more in contributions to California Public Employees' Retirement System (CalPERS)—increasing their contributions by 2 percent to 5 percent of pay—on an ongoing basis. CalPERS would be expected to lower state pension contributions by a like amount.

- ☑ ***Higher Pay for Most Workers Beginning in 2011-12.*** The agreements generally increase the top level of the pay range for employees by up to 5 percent, effective January 2012. As a result, the state savings described above would be completely offset in 2011-12.

- ☑ ***Retirement Benefit Changes to Reduce Long-Term State Costs.*** The agreements would reduce retirement benefits for future state employees. These changes, coupled with the shift of pension costs to employees, should reduce state costs substantially in the coming decades.

- ☑ ***Furloughs and Continuous Appropriations.*** The agreements and/or accompanying legislation would prohibit furloughs for these bargaining units through the expiration of these agreements (in either July 2012 or July 2013). The administration and unions also agree to seek legislative approval for the economic terms of these agreements to be continuously appropriated for the duration of these agreements. Such a continuous appropriation would protect these employees from having wages lowered to the federal minimum during budget impasses, but it could also restrict legislative flexibility.

Summary of the Six MOUs *(Continued)*

☑ ***More Detail at Department of Personnel Administration (DPA) Web Site.*** This analysis does not describe every provision of the six units' MOUs. Summaries of each of the proposed MOUs and the text of each agreement are available at DPA's web site: **www.dpa.ca.gov/bargaining/contracts/index.htm**.

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Bargaining Units at a Glance

- ☑ ***Unit 5.*** Unit 5 consists of about 6,100 full-time equivalent CHP officers. Unit 5 is represented by the California Association of Highway Patrolmen.

- ☑ ***Unit 8.*** Unit 8 consists of about 4,600 state firefighters, almost all of whom work for CalFire. Unit 8 is represented by CDF Firefighters.

- ☑ ***Unit 12.*** Unit 12 consists of 11,000 employees who operate and maintain state equipment, facilities, and roads. Among the largest classifications in the unit are Caltrans equipment operators and highway maintenance workers. Locals 3, 12, 39, and 501 of the International Union of Operating Engineers represent Unit 12.

- ☑ ***Unit 16.*** Unit 16 consists of about 1,900 physicians, surgeons, and psychiatrists who work in institutionalized settings, such as prisons and state hospitals. The Union of American Physicians and Dentists represents Unit 16.

- ☑ ***Unit 18.*** Unit 18 consists of 6,000 psychiatric technicians, employees that provide behavioral and psychiatric nursing care to persons in state institutions. The California Association of Psychiatric Technicians represents the unit.

- ☑ ***Unit 19.*** Unit 19 consists of about 4,600 health and social services professionals, such as psychologists, rehabilitation therapists, pharmacists, adoption specialists, community care licensing analysts, social workers, dietitians, and prison chaplains. The union representing Unit 19 is the American Federation of State, County, and Municipal Employees, Local 2620.

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Background

☑ ***All Bargaining Unit Contracts Have Expired.*** With the expiration of the CHP officer MOU on July 3, 2010, all bargaining units' MOUs now have expired. Generally speaking, their provisions continue in effect until new MOUs are approved pursuant to Section 3517.8 of the Government Code (known as the "evergreen law").

☑ ***Generally, No Salary Increases Since 2007.*** The last broad-based state employee salary increases were in 2007, as a result of MOUs approved by the Legislature in 2006. There were, however, some exceptions:

- ***Firefighter MOUs.*** The 2006 MOUs provided no broad-based increases to Unit 8 firefighters. Many firefighters, however, received substantial improvements in compensation under their prior MOU resulting from changes in overtime and work rules.

- ***CHP Pay Law and Retiree Health Prefunding.*** State law generally provides for annual raises for CHP officers. Officers received such a raise in 2008. Last year, however, Unit 5 and the state agreed to defer payments of these increases to officers in 2009 and 2010 and redirect these funds to begin retiring the state's unfunded retiree health liabilities.

☑ ***Defined Benefit Pensions Were Increased in 1999 Legislation.*** Chapter 555, Statutes of 1999 (SB 400, Ortiz), and companion legislation increased pension benefits for state workers. Annual costs for state employee pensions have skyrocketed over the past decade, growing from about $140 million in 1999-00 (an artificially low number due to the stock market bubble) to $3.8 billion in 2010-11. There are multiple causes for this increase, including weak investment returns, changing employee and retiree demographics, and the increased benefits.

Background *(Continued)*

☑ ***Furloughs and the Possibility of Minimum Wage for State Workers.*** In 2009, the Governor ordered the beginning of a furlough program that eventually resulted in the closure of most state offices for three days per month and a 13.9 percent reduction in the pay of most state workers during 2009-10. (Some state employees were exempt from furloughs, including CHP officers and firefighters.) The Governor also is currently seeking to have the Controller enforce a 2003 California Supreme Court directive that state employee pay be reduced to the federal minimum wage during periods when a state budget—which includes appropriations for state worker pay—is not in place. (The furlough and minimum wage matters are the subject of ongoing litigation.)

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Proposed MOUs: Personal Leave Program

- ☑ ***Negotiated 4.6 Percent Reduction in Pay for 12 Months.*** In the past the state has negotiated PLPs with employee groups to generate state savings. The PLP included in four of the six proposed MOUs (excluding Units 5 and 8) involves one additional day of leave per month and reduced take-home pay of 4.6 percent for 12 months. The PLP would begin after MOU ratification and end in early 2011-12.

- ☑ ***No Cash Value for PLP Days.*** Employees generally would have until June 2014 to use accumulated PLP leave time. It would have no "cash out" value.

- ☑ ***Pay Reduction Does Not Affect Pension Benefits.*** The PLP would not result in a reduction in the "final compensation" used to determine employee pension benefit levels. Pension contributions to CalPERS, however, would be temporarily reduced based on the lower pay levels for employees. This is similar to what occurred during the recent furlough program.

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Proposed MOUs: Changes in Pension Contributions and Retirement Benefits

☑ ***Reduction of State Pension Costs Would Begin in 2010-11.*** The agreements increase active and future employees' pension contributions beginning in 2010-11, so that employees in each of these six bargaining units generally would be contributing around 10 percent of their pay to cover pension expenses (as summarized in Figure 1). Under a provision already included in the budget bill by the Conference Committee, CalPERS would be expected to lower state pension contributions—below what they otherwise would be under current law—by a like amount. These savings would be ongoing in nature. (Because state contributions to CalPERS are likely to increase significantly in the coming years, this change in and of itself may not reduce *total* state pension costs, but costs would be lower than they otherwise would be.)

Figure 1

Current and Proposed Employee Pension Contributions

(Percent of Monthly Pay[a])

Retirement Category	Current Contribution	Contribution Under Proposed MOUs
Miscellaneous	5%	10%
Industrial	5	10
Safety	6	11
Firefighter	6	10
CHP Officer	8	10[b]

[a] A small portion of monthly pay is excluded from the calculation. In some cases, different contributions are applicable for employees not subject to Social Security.

[b] Initially, this higher contribution would be funded from a redirection of funds employees previously were obligated to contribute to prefunding retiree health benefits. Beginning in July 2013, this would become the "normal rate" of employee pension contribution for CHP officers.

☑ ***Reduction of Pensions for Future Hires.*** The MOUs would reduce pension benefits for future state employees, as follows:

- ***CHP Officers and Firefighters.*** The pension benefit formula for future CHP officers and Unit 8 firefighters would be reduced from "3 percent at age 50" to "3 percent at age 55."

- ***Miscellaneous and Industrial Employees.*** The pension formula for future miscellaneous and industrial employees would be reduced from "2 percent at age 55" to "2 percent at age 60." The benefits would grow after an employee reaches age 60, eventually reaching "2.418 percent at age 63" (slightly below the current maximum level).
- ***State Safety Employees.*** The pension formula for future state safety employees generally would be reduced from "2.5 percent at age 55" to "2 percent at age 55." The benefits under the new formula would grow after age 55, eventually reaching "2.5 percent at age 60."
- ***Pension Benefit Based on Highest Three Years' Compensation.*** In 2006, the Legislature approved changes for several bargaining units (including Units 12, 16, 18, and 19) that reduced pension benefits for many future state employees by having the benefits based on the workers' highest *three years* of their pay, rather than the highest *single year* of pay. These agreements and accompanying legislation would extend a similar change to future employees in Units 5 and 8.

☑ ***CalPERS Transparency Legislation Proposal.*** In the agreements, the unions agree not to oppose future legislation that would require CalPERS "to use supportable assumptions and data that will be evaluated by another party" agreeable to the administration and unions. This is part of an apparently larger legislative package the Governor is proposing that would also require: (1) the CalPERS Chief Actuary to submit reports related to the system's investment return assumptions and (2) "the Legislature to review these reports."

☑ ***Retiree Health Prefunding for Units 12 and 16.*** Under the agreements, Unit 12 and Unit 16 workers would start contributing 0.5 percent of their pay to prefunding retiree health benefits, effective July 1, 2012. Over the long term, this would help to reduce unfunded liabilities for these benefits.

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Proposed MOUs: Unit 5 Pension and Retiree Health Contributions

☑ ***Series of Changes for Unit 5 Pension/Retiree Health Contributions.*** The Unit 5 agreement would apply a series of additional changes to pension and retiree health contributions of CHP officers required under current law, as follows:

- ***Temporary Suspension of Retiree Health Prefunding.*** The agreement temporarily suspends the retiree health prefunding contributions from employees—2 percent of pay—that were agreed to by the union and the state in 2009. This suspension would continue for the duration of the agreement until July 2013.

- ***Redirection of Retiree Health Contributions to Pension Funding.*** Under the agreement, the 2 percent employee contributions that otherwise would have been directed to retiree health prefunding would be directed to CalPERS to fund Unit 5 pensions—in addition to the approximately 8 percent employee contributions to CalPERS that resulted from the unit's 2006 MOU. The total employee pension contributions would be about 10 percent of pay. The added employee pension contributions would be expected to offset pension contributions that otherwise would have to be made by the state. This contribution mechanism would continue for the duration of the agreement.

- ***Delay of State Match for Retiree Health Prefunding.*** Due to the suspension of the employees' retiree health prefunding contributions, the date on which the state had agreed to match employees' contributions for retiree health prefunding—July 2012—would be delayed by one year to July 2013. (This would result in a one-time state savings in 2012-13, but the state's match payment would have to be made—as under current law—in 2013-14.)

Proposed MOUs: Unit 5 Pension and Retiree Health Contributions *(Continued)*

- ***Increased Employee Contributions Beginning in 2013-14.*** Effective in July 2013, CHP officers' "normal rate" of employee pension contributions would rise to about 10 percent of pay. Therefore, the amount of employee contributions being paid to CalPERS would remain at 10 percent through the course of the agreement.

- ***Changes in CHP Officer Salary Survey.*** Effective with the 2013 CHP officer salary survey—the mechanism for surveying certain local police salaries and increasing officer compensation under Government Code Section 19827—the survey will consider local agencies' "employee paid [retiree health] prefunding arrangements." Depending on how CHP officers' prefunding payments compare with those of local agencies, salary increases in 2013-14 and beyond may increase or decrease, compared to current law. In addition, the agreement provides that the state will not receive credit for CHP officers' 2 percent "top step" pay increase (described on the next page) in the annual salary survey.

Proposed MOUs: Increases in "Top Step" of Employee Pay Ranges

☑ ***Significant Added Cost Beginning in 2011-12.*** The agreements would increase the level of the "top step" of employee pay ranges by 2 percent, 4 percent, or 5 percent (depending on the bargaining unit), effective January 2012. Since most state employees are or will be at this top step and state employees routinely receive step increases in pay, this will result in a substantial state cost increase beginning in 2011-12. Compared to current law, this change also will increase state overtime costs and pension benefit levels of current state employees who benefit from this provision in 2012 or later.

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Proposed MOUs: Changes in Health Benefits for Some Units

☑ ***Increased Health Benefits for Unit 12 and 18 Employees.*** Unit 12 craft and maintenance employees and Unit 18 psychiatric technicians would benefit from increased state contributions to their CalPERS health benefit premiums beginning in 2010-11 under the agreements. These groups are among those that last received increases in state health premium contributions in January 2008, even though CalPERS premiums increased in both 2009 and 2010 for many plans. Under the agreements, Unit 12 and 18 employees would see their state contributions increase to about 80 percent of average health premium costs after ratification of the MOU, with an additional increase in January 2011 to keep pace with CalPERS rate increases at that time.

☑ ***Changed "Vesting" of Retiree Health Benefits for Future Unit 12 Workers.*** Most state employees hired since 1985 have been eligible to receive state contributions for their health benefits during retirement only after a period of "vesting." Retirees and eligible family members generally receive no state health contributions if they retire with less than ten years of service, but they receive 50 percent of the maximum state contribution with ten years of service. This amount climbs to 100 percent of the maximum with 20 years of service. (The maximum contribution covers around 90 percent to 100 percent of average employee health premiums.) The Unit 12 agreement would apply a new vesting schedule to future craft and maintenance workers that includes:

- No state retiree health contributions for future workers who retire with less than 15 years of service.
- State retiree health contributions would begin at 50 percent of the maximum contribution after 15 years of service, growing to 100 percent of the maximum after 25 years of service.

Proposed MOUs: Changes in Holiday and Overtime Provisions

☑ ***Changes in Holiday Premium Pay.*** A February 2008 budget trailer bill—Chapter 4, Statutes of the 2009-10 Third Extraordinary Session (SBX3 8, Ducheny)—reduced the number of state holidays (eliminating Lincoln's Birthday and Columbus Day) as a cost-savings measure. This bill provided that state employees who worked on the remaining state holidays would receive "straight-time" pay, instead of premium pay. The MOUs for Units 12, 18, and 19 would restore premium pay—generally 150 percent of regular pay—for employees that work on six holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas.

☑ ***Changes in Hours Used to Calculate Overtime.*** The same February 2008 trailer bill added Section 19844.1 to the Government Code, which provides that various types of paid and unpaid leave "shall not be considered as time worked by the employee for the purpose of computing cash compensation for overtime." For example, if a worker takes leave on Monday (an eight-hour work day) and then works eight-hour days on Tuesday through Friday (32 work hours), she could not count her first hour of work on that Saturday as the 41st weekly work hour and earn overtime pay at 150 percent of her regular hourly pay rate. Section 19844.1 provides that if there is a conflict between its provisions and a future MOU, the MOU generally will be controlling. We understand the new law was never applied to all state employees. The proposed MOUs for Units 5, 8, and 18 contain language that would allow use of some or all types of leave for purposes of calculating overtime hours.

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Proposed MOUs: Furloughs, Continuous Appropriations, and Contract Protection Clauses

- ☑ ***No Furloughs Through Duration of the Agreements.*** The agreements would prohibit the state from imposing a furlough program for these employees—similar to that ordered by the Governor in 2009 and 2010—until after the expiration of these agreements.

- ☑ ***Continuous Appropriations Sought from Legislature.*** In the agreements, the unions and the administration agree to seek legislative approval for a continuous appropriation for the economic terms of the agreements through their expiration dates. The text of the agreements notes that these continuous appropriations would maintain employee salaries in case of an untimely budget.

- ☑ ***Contract Protection Provisions.*** Generally speaking, the agreements include "most favored nation" or "contract protection" clauses that allow the reopening of negotiations if another state employee bargaining unit subsequently enters into an agreement with the state that does not include "pension reform" or provides a compensation package of greater value. In the case of Unit 8 firefighters, however, the contract protection clause states that Unit 8 members "shall receive" the more lucrative compensation package negotiated later by another union. (The Unit 8 agreement also provides for a grievance procedure if the union and the administration cannot agree on an implementation plan for this more lucrative package.)

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Administration's Fiscal Estimates

Figure 2

Administration Estimates of Costs and Savings Under the Six Proposed MOUs

(In Millions)

	2010-11	2011-12	2012-13
General Fund			
Personal leave program savings	$48.2	$3.7	—
Shift of pension contributions to employees	38.6	45.2	$46.5
Other savings	—	—	2.3
Subtotal, Savings	($86.8)	($48.9)	($48.8)
Increase in top step of pay ranges	—	$32.3	$64.5
Increased health benefit costs	6.9	9.6	9.6
Changes in holiday provisions	5.6	5.6	5.6
Subtotal, Costs	($12.5)	($47.5)	($79.7)
Net General Fund Savings(-)/Costs(+)	**-$74.3**	**-$1.4**	**$30.9**
Other Funds			
Personal leave program savings	$28.2	$2.5	—
Shift of pension contributions to employees	32.4	38.5	$39.3
Other savings	—	—	1.9
Subtotal, Savings	($60.6)	($40.9)	($41.2)
Increase in top step of pay ranges	—	$28.8	$57.6
Increased health benefit costs	$7.4	10.4	10.4
Changes in holiday provisions	1.7	1.7	1.7
Other costs	8.8	12.1	14.4
Subtotal, Costs	($17.9)	($52.9)	($84.0)
Net Other Funds Net Savings(-)/Costs(+)	**-$42.8**	**$12.0**	**$42.7**
Total, All Funds Net Savings(-)/Costs(+)	**-$117.1**	**$10.6**	**$73.7**

☑ ***Savings in 2010-11.*** The administration's fiscal estimates for the six MOUs show that the state would experience budgetary savings of $117 million ($74 million General Fund) in 2010-11. These savings are reductions in state costs *compared to current law*. Since the current Budget Conference Committee plan assumes no savings of the type included in these MOUs, these amounts also would be savings for these budget plans. In contrast, since the agreements do not include all decreases in state employee compensation in the Governor's budget plan, they would result in higher state costs for these units *compared to the Governor's May Revision.*

- ☑ ***Little Net Impact in 2011-12.*** The administration's estimates show that the MOUs would result in little net budgetary impact on the state in 2011-12: $10.6 million net additional cost across all funds and $1.4 million in net General Fund savings. The change from 2010-11 to 2011-12 results mainly from the end of the PLP program and the increases in the top steps of employee pay ranges.

- ☑ ***Rising Costs for Some Period Thereafter.*** The administration's estimates indicate that the MOUs would result in cost increases for the state, compared to current law, through at least 2013-14. As shown in Figure 1, in 2012-13, cost increases would be about $74 million ($31 million General Fund) under the administration's estimates.

- ☑ ***Long-Term Cost Reductions.*** The changes in pension and retiree health benefits likely would result in significant cost reductions for the state in the long run (over many decades). A recent CalPERS estimate, for example, indicated that similar pension benefit changes—if extended to *all* state employees—would reduce annual state pension contributions by over $200 million by 2020 and up to about $1 billion by 2040. As of July 13, however, the administration has not submitted an actuarial estimate of how the pension, retiree health, and related changes in these six agreements would change overall state retirement costs for the affected bargaining units.

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LAO Comments on Fiscal Estimates

Figure 3

LAO Estimates of Costs and Savings Under the Six Proposed MOUs

(In Millions)

	2010-11	2011-12	2012-13
General Fund			
Savings	$86.8	$48.9	$46.5
Costs	18.4	53.6	86.0
Net General Fund Savings(-)/Costs(+)	**-$68.4**	**$4.7**	**$39.6**
Other Funds			
Savings	$60.6	$40.9	$50.3
Costs	11.7	43.5	72.4
Net Other Funds Savings(-)/Costs(+)	**-$48.9**	**$2.6**	**$22.0**
Total, All Funds Savings(-)/Costs(+)	**-$117.3**	**$7.3**	**$61.6**

Note: Does not reflect short-term costs or savings in pension contributions resulting from pay changes and changes in pension benefit formulas. Over the long term, significant state savings from pension changes included in the agreements are likely.

☑ ***Some Scoring Differences From Administration's Estimates.*** Our estimates of costs and savings are similar to the administration's, but differ in the following respects:

- We do not agree with the administration's characterization of the suspension of Unit 5 retiree health prefunding contributions as a state cost during the term of these agreements. In the short run, this will not change state retiree health costs significantly because the state will continue its pay-as-you-go approach to retiree health costs. In the long run, however, it will result in higher state costs. Similarly, the Unit 12 and 16 retiree health prefunding contributions are not likely to produce state savings in 2012-13, as the administration indicates. They should produce savings in later years.

- We acknowledge the one-year delay in state match payments for Unit 5 retiree health prefunding as a one-time savings in 2012-13, though this would increase state costs in later years.

LAO Comments on Fiscal Estimates *(Continued)*

- We exclude from our cost increase estimates the higher Unit 5 salaries already required under the Government Code due to the CHP officer salary survey.
- Our estimates account for higher state overtime costs resulting from the MOUs. In particular, because CalFire's budget was reduced to reflect savings due to last year's change related to leave time, the Unit 8 MOU provisions on overtime create a cost exposure for this department estimated at about $9 million ($7 million General Fund) per year.
- Our estimates delete incorrectly assumed holiday pay costs related to the Unit 16 MOU.

☑ ***Savings in 2010-11 and Higher Costs in 2011-12 and 2012-13.*** As shown in Figure 3, we agree with the administration that the agreements would produce savings in 2010-11 compared to current law. Similarly, our estimates indicate that the MOUs would result in slightly higher state costs in 2011-12, with additional cost increases in 2012-13.

☑ ***Changes to Pension and Retiree Health Costs Not Included.*** Our estimates and the administration's account for savings due to the shift of some pension contributions from the state to employees. Due to the lack of an actuarial analysis concerning the other pension and retiree health provisions of the six MOUs, however, the estimates exclude the effects of these changes. Generally speaking, significant pension cost savings only are likely to emerge over the long term. We expect these long-term savings for the state will be substantial. Long-term pension savings will be offset to some extent by higher state compensation in future decades due to: (1) increased average longevity in service in the state workforce due to lower retirement benefits (which will result in senior, higher paid state workers remaining employed for longer period of time) and (2) potentially increased demands for other types of compensation (increased salaries and other benefits) by state workers.

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LAO Comments on Fiscal Estimates *(Continued)*

☑ ***2013-14 Cost and Savings Estimate Not Included.*** Several categories of costs and savings included in the administration's 2013-14 estimate of Unit 5 CHP officer costs are already required under current law. Moreover, the proposed change in the survey methodology makes it very difficult to predict the level of increased or decreased CHP officer costs that year. Accordingly, our estimates do not extend past 2012-13, although we agree with the administration that significant Unit 5 cost increases are a possibility in 2013-14 under the agreements.

☑ ***Costs for Supervisors and Managers Not Included.*** It is unclear whether the administration intends to use its power to extend similar pay and benefit changes to nonrepresented supervisors and managers related to these six bargaining units. No cost estimate for these excluded personnel has been submitted. Consistent with our past guidance, we recommend that the Legislature request that DPA formalize its pay plan—with full savings and cost estimates—for the managers and supervisors prior to any approval of MOUs.

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LAO Comment: Legislature Faces Major Decision on Continuous Appropriations

☑ ***Continuous Appropriation Could "Lock In" Costs Through 2013.*** The six agreements suggest that the Legislature approve a continuous appropriation of the agreements' economic terms through their expiration date—July 2012 or July 2013. This would serve to prevent the bargaining unit employees from having their pay reduced to federal minimum wage when no budget is in place. Yet, under such a broad continuous appropriation, the Legislature could lose its ability to choose whether to fully fund these MOUs over the next few years. Currently, the Dills Act allows the Legislature not to fully fund an MOU in the annual budget act.

☑ ***Options for the Legislature.*** We understand that the administration has not yet submitted its proposed continuous appropriation language. The Legislature has the following options with regard to this:

- ***Broad Continuous Appropriation—Loss of Legislative Flexibility.*** If the Legislature approves a continuous appropriation for all economic terms of the six agreements through their duration with no caveats or limitations, it is possible the workers in these units would have a contractual right to receive compensation, as spelled out in these agreements, until the MOUs expire. Any breach could be a violation of the workers' constitutional rights.

- ***Limited Continuous Appropriation—More Legislative Flexibility.*** If the Legislature approves a more limited continuous appropriation, it still could prevent these workers' pay from being reduced to minimum wage. Such a continuous appropriation would continue workers' pay and benefits from the prior fiscal year until a budget is enacted. This would preserve in the final budget act the Legislature's ability to choose whether to appropriate funds in that year for any fiscal provision of an MOU.

LAO Comment: Legislature Faces Major Decision on Continuous Appropriations

(Continued)

- ***No Continuous Appropriation—Minimum Wage for Employees in Late Budget Situation.*** By not approving a continuous appropriation, the Legislature would preserve for itself maximum fiscal flexibility. Under case law, however, the state would continue to be obligated to reduce workers' pay to federal minimum wage during a budget impasse due to the lack of appropriations for state worker pay in that scenario. While the administration and unions would have met their MOU responsibilities to present a continuous appropriation proposal to the Legislature, workers likely would perceive that a major employee benefit in this agreement was rejected by lawmakers.